

11 U.S.C. § 1307(c)  
11 U.S.C. § 105(a)

In re Michael A. Monniere

Case No. 395-35991-psh13  
District Ct. No. 96-691-HA

11/14/96

Haggerty aff'm PSH

Unpublished

The bankruptcy court denied confirmation of the debtor's chapter 13 plan and dismissed the debtor's case based on its conclusion that the plan, which provided for payment of attorney fees and administrative costs only, was merely a disguised liquidation and was filed in contravention of §1325(a)(3). The debtor appealed contending that, under §1307(c)(5), the court should have allowed him to modify his plan rather than dismissing the case. The district court affirmed the bankruptcy court noting that §105 grants the court broad authority to grant such relief as is necessary to effectuate the goals of the bankruptcy code, including the right to sua sponte dismiss a case which conflicts with those goals.

M-11/14/96

FILED

Entered on the Docket on  
11/15/96  
DONALD M. CINNAMOND  
By [Signature] Deputy

NOV 14 PM 1:18  
CLERK, U.S. BANKRUPTCY COURT  
DISTRICT OF OREGON  
BY [Signature]

CLERK, U.S. BANKRUPTCY COURT  
DISTRICT OF OREGON  
NOV 14 1996 Lod 5.154  
LODGED \_\_\_\_\_ RECD \_\_\_\_\_  
PAID \_\_\_\_\_ DOCKETED WY  
395-35991

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

In re: )  
MICHAEL MONNIERE, ) Civil No. 96-691-HA  
Debtor, ) JUDGMENT  
\_\_\_\_\_ )

Based on the record,  
IT IS ORDERED AND ADJUDGED this action is dismissed.  
All pending motions are denied as moot.  
DATED: Nov 14, 1996

Ancer L. Haggerty  
Ancer L. Haggerty  
United States District Judge

[Signature]

1 - JUDGMENT

Certified to be a true and correct  
copy of original filed in my office.  
Date: MAY 13 1997  
Donald M. Cinnamon, Clerk  
By: [Signature], Deputy

31  
(31)

FILED

96 NOV 14 PM 1:13

CLERK, U.S. BANKRUPTCY COURT  
DISTRICT OF OREGON

BY

CLERK, U.S. BANKRUPTCY COURT  
DISTRICT OF OREGON

NOV 14 1996

601  
5-15-97

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

RECD

DOCKETED

395-35991

In re:

MICHAEL MONNIERE,

Debtor,

Civil No. 96-691-HA

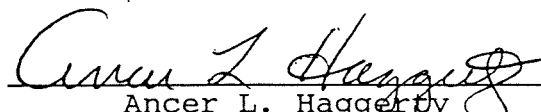
O R D E R

HAGGERTY, Judge:

Debtor Michael Monniere appeals from the January 31, 1996, Order of the bankruptcy court denying confirmation of his proposed Chapter 13 plan and dismissing his petition. For the reasons stated in the opinion, the judgment of the bankruptcy court is affirmed. Monniere's appeal is dismissed and all pending motions are denied as moot.

IT IS SO ORDERED.

Dated this 14 day of November, 1996.

  
Ancer L. Haggerty  
United States District Judge

1 - ORDER

Certified to be a true and correct  
copy of original filed in my office.

Date: MAY 13 1997

Donald M. Cinnamond, Clerk

By: , Deputy

30 (30)

FILED

NOV 14 PM 12:20

Entered on the Docket on  
11/15/96  
DONALD M. CINNAMOND  
By                      Deputy

CLERK, U.S. BANKRUPTCY COURT  
DISTRICT OF OREGON

NOV 14 1996

LODGED \_\_\_\_\_ REC'D \_\_\_\_\_  
PAID \_\_\_\_\_ DOCKETED NY

IN THE UNITED STATES DISTRICT COURT

395-35991

FOR THE DISTRICT OF OREGON

In re: )  
MICHAEL MONNIERE, ) Civil No. 96-691-HA  
Debtor, ) OPINION

Alan Unkeles  
P.O. Box 5337  
Aloha, Oregon 97006  
Attorney for Michael Monniere

Mark B. Block  
2701 N.W. Vaughn #151  
Portland, Oregon 97210  
Attorney for Robert W. Myers, Trustee

HAGGERTY, District Judge:

Debtor Michael Monniere appeals from the January 31, 1996, Order of the bankruptcy court denying confirmation of his proposed Chapter 13 plan and dismissing his petition. For the reasons stated below, the judgment of the bankruptcy court is affirmed.

#### PROCEDURAL BACKGROUND

Michael Monniere filed a voluntary petition for relief under Chapter 13 of the United States Bankruptcy Code in Oregon

1 - OPINION

Certified to be a true and correct  
copy of original filed in my office.

Date: MAY 13 1997  
Donald M. Cinnamon, Clerk

By:                     , Deputy

29

1 on August 30, 1995. A confirmation hearing was held January  
2 11, 1996, and neither Monniere or Robert W. Meyers, Trustee,  
3 appeared. There were no objections to the plan and Meyers  
4 recommended confirmation. Nevertheless, on January 31, 1996,  
5 the bankruptcy court entered an order denying confirmation of  
6 the plan and dismissing Monniere's petition. The court  
7 determined that the plan was filed in contravention of section  
8 1325(a)(3) of the United States Bankruptcy Code, 11 U.S.C. §  
9 1325(a)(3), and dismissed the petition sua sponte.

10 On February 7, 1996, Monniere filed a notice of appeal  
11 from the decision of the bankruptcy court. Subsequently, on  
12 March 6, 1996, Myers filed an objection to Bankruptcy Appellate  
13 Panel determination. Accordingly, this court has jurisdiction  
14 pursuant to 28 U.S.C. § 158(a). Monniere has appealed the  
15 decision of the bankruptcy court to dismiss his petition sua  
16 sponte.

#### 17 STANDARD OF REVIEW

18 The district court must review the bankruptcy court's  
19 findings of fact under the clearly erroneous standard, and its  
20 conclusions of law, de novo. In re Mellor, 734 F.2d 1396, 1399  
21 (9th Cir. 1984). The parties agree that the issue on appeal is  
22 a question of law to be reviewed de novo.

#### 23 DISCUSSION

24 Monniere's proposed plan required him to pay the sum of  
25 \$41 monthly to Myers for a period of not less than 36 months.  
26 All money paid into the plan by Monniere would be paid to  
27 attorney fees and administrative expenses with no payments of  
28

1 any kind being made to any creditor. Monniere was barred from  
2 filing a Chapter 7 plan and receiving a discharge of his debts  
3 under Chapter 7 because he was granted a discharge under  
4 section 727 within 6 years of the date of his Chapter 13  
5 filing. The court concluded that Monniere's plan was merely a  
6 "disguised liquidation" and, as such, failed to comply with the  
7 provisions of 11 U.S.C. § 1325(a). The court went on to decide  
8 that the proposed "no pay" plan also failed to meet the good  
9 faith requirement of section 1325(a)(3). Monniere does not  
10 challenge either of these findings by the bankruptcy court.

11 Monniere challenges only the bankruptcy court's authority  
12 to dismiss his petition sua sponte. Specifically, he contends  
13 that the grounds for dismissing a Chapter 13 petition are  
14 enumerated in section 1307(c) of the Bankruptcy Code, 11 U.S.C.  
15 § 1307(c). He asserts that section 1307(c)(5) is the  
16 applicable provision here, and the bankruptcy court ignored the  
17 requirements of that section when it failed to provide Monniere  
18 an opportunity to either modify his plan or file another plan.  
19 Section 1307(c)(5) provides that:

20 Except as provided in subsection (e) of this section, on  
21 request of a party in interest or the United States  
22 trustee and after notice and a hearing, the court may  
23 convert a case under this chapter to a case under chapter  
24 7 of this title, or may dismiss a case under this  
25 chapter, whichever is in the best interests of creditors  
and the estate, for cause, including--

(5) denial of confirmation of a plan under section 1325  
of this title and denial of a request made for additional  
time for filing another plan or a modification of a

plan[.]

26 11 U.S.C. § 1307(c)(5) (1996).

1           Section 1307(c) is not the only basis, however, for  
2 dismissal of a Chapter 13 plan. Section 105(a) of the  
3 Bankruptcy Code provides bankruptcy courts with broad general  
4 powers to grant such relief as is necessary to effectuate the  
5 provisions of the Bankruptcy Code. 11 U.S.C. § 105(a); In re  
6 Easton, 882 F.2d 312, 315 (8th Cir.1989). See also In re  
7 Hammers, 988 F.2d 32, 34-35 (5th Cir. 1993)(section 105(a)  
8 authorized a sua sponte dismissal by the court). Section  
9 105(a) states:

10           the court may issue any order, process, or judgment that  
11 is necessary or appropriate to carry out the provisions  
12 of this title. No provision of this title providing for  
13 the raising of an issue by a party in interest shall be  
14 construed to preclude the court from, sua sponte, taking  
any action or making any determination necessary or  
appropriate to enforce or implement court orders or  
rules, or to prevent an abuse of process.

15           11 U.S.C. § 105(a) (1996). Thus, sua sponte dismissals are  
16 permitted.

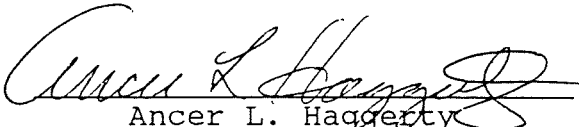
17           The bankruptcy court in this case determined that the  
18 plan: 1) ran counter to the legislative purpose of providing  
19 debt repayment under Chapter 13; 2) was merely a "disguised  
20 liquidation" and did not comply with section 1325(a)(1) of the  
21 Bankruptcy Code; and 3) was an attempt to circumvent the clear  
22 purpose behind section 727(a)(8) and (9) of the Bankruptcy Code  
23 and did not comply with section 1325(a)(3) of the Bankruptcy  
24 Code. As stated above, Monniere does not challenge these  
25 findings. Further, these findings provide an adequate basis  
26 for a section 105(a) dismissal by the bankruptcy court.  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

CONCLUSION

Based on the foregoing, the order of the bankruptcy court denying confirmation of Monniere's proposed Chapter 13 plan and dismissing his petition is AFFIRMED.

Dated this 14 day of November, 1996.

  
Ancer L. Haggerty  
United States District Judge